

# 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 June 3, 2020

### I. SUMMARY

{¶ 1} The Commission adopts proposed amendments to Ohio Adm.Code 4901:1-35-01, 4901:1-35-03, 4901:1-35-08, 4901:1-35-09, and 4901:1-35-11 and as no change rules Ohio Adm.Code 4901:1-35-02, 4901:1-35-04, 4901:1-35-05, 4901:1-35-06, 4901:1-35-07, and 4901:1-35-10.

### II. DISCUSSION

#### A. *Procedural Background*

{¶ 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of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded.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 Chapter 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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} Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, have had negative unintended consequences, or unnecessarily impede 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} By Entry issued on October 24, 2018, the Commission scheduled a workshop on November 8, 2018, to elicit feedback on the rules and to permit stakeholders to propose their own revisions to the rules for the Commission's consideration. The workshop was conducted as scheduled, with changes proposed by three stakeholders.

{¶ 7} The Commission evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-35 and, following its review, proposed amendments to Ohio Adm.Code 4901:1-35-01, 4901:1-35-03, 4901:1-35-08, 4901:1-35-09, and 4901:1-35-11. The remaining rules in the chapter were, under the Commission's proposal, to remain unchanged.

{¶ 8} By Entry issued July 31, 2019, the Commission ordered all interested parties to file comments and reply comments concerning the proposed amendments. Initial and reply comments were due by August 23, 2019, and September 6, 2019, respectively.

{¶ 9} Consistent with the with the July 31, 2019 Entry, written comments and reply comments were filed by August 23, 2019, and September 6, 2019, by Duke Energy Ohio (Duke), First Energy (FE), and Office of the Ohio Consumers' Counsel (OCC). The Northwest Ohio Aggregation Coalition (NOAC) filed reply comments only.

#### **B. Consideration of the Comments**

{¶ 10} **Ohio Adm.Code 4901:1-35-03(A) Filing and Contents of Applications:** FE observes that the current rule requires an electric distribution utility (EDU) to provide an original and ten printed copies of a standard service offering (SSO) application, along with additional copies provided to the Commission upon request. FE contends that FE and other EDUs have, for years, filed their SSO applications electronically. Because these applications are voluminous, FE argues, creation of numerous hard copies in this era of increasing electronic transmittals and sustainability awareness seems wasteful and unnecessarily burdensome. FE proposes to remove the requirement to file hard copies and simply make them available to the Commission upon request.

{¶ 11} In reply comments, OCC opposes FE's proposal. OCC asserts that large-sized documents or spreadsheets in an electric format, or printed from an electric format, may be hard to read or not legible. In OCC's opinion, protecting consumers' effective access to information about an electric utility's standard service offer application means not adopting FirstEnergy's proposal.

{¶ 12} The Commission finds that Staff uses the hard copies and is not persuaded that it is overly burdensome for a utility to create them. Therefore, the requirement to provide ten copies with the original of the application will be retained.

{¶ 13} **Ohio Adm.Code 4901:1-35-03(B)(1) Filing and Contents of SSO Applications:** Duke comments that the rule lists three requirements "to be demonstrated in a separate section of the SSO application proposing an MRO [market-rate offer]." Duke suggests that the Commission delete 4901:1-35-03(B)(1), because all of the electric utilities that such requirements apply to already fulfill these requirements, and there is no added value in requiring redundant documentation in the SSO application.

{¶ 14} In reply comments, OCC asserts that Duke's proposal should be rejected. Because electric utilities are already members of a regional transmission organization (RTO) with an independent market monitor (IMM) and publicly available pricing information, observes OCC, meeting this requirement will impose minimal costs, if any, on the electric utilities. In OCC's opinion, the requirements in Ohio Adm.Code 4901:1-35-03(B)(1) are necessary and should be maintained to protect consumers. OCC adds that electric utilities' participation in an RTO with an IMM and publicly available pricing information benefits consumers with timely information and competitively set, transparent prices.

{¶ 15} The Commission is not persuaded that Duke's proposal is reasonable or necessary. We find that the aforementioned information is still needed and, as OCC points out, the burden to comply with this part of the rule is minimal.

**{¶ 16} Ohio Adm.Code 4901:1-35-03(B)(2)(b) Filing and Contents of SSO Applications:** Duke asserts that this rule’s required submission of “[p]rojected generation, transmission, and distribution rate impacts” is confusing and adds little real value. As Duke explains, nothing in R.C. 4928.142 allows an MRO to include provisions for transmission or distribution; therefore, any projected “rate impacts” could only apply to generation. Duke contends that the reference in the rule to transmission and distribution rate impacts is unnecessarily confusing. Second, Duke states, a utility can only obtain generation through a competitive bidding process (CBP), the outcome of which is unpredictable. Prior to Commission approval of the CBP and procurement of the actual generation, a utility cannot know or meaningfully project the generation rate impacts. Duke asserts that the requirement to provide a highly contingent and uninformed projection is not helpful and should be removed.

**{¶ 17}** In reply comments, OCC urges the Commission to reject Duke’s proposal. OCC observes that the comparison of MRO versus electric security plan (ESP) that is required in the ESP statute requires comparing all the rate impacts between an ESP versus an MRO. According to OCC, this necessarily includes comparing the rate impacts of distribution and transmission costs of an ESP and an MRO. OCC states that, if the rate impacts of distribution and transmission provisions were removed from an MRO, the comparison between an MRO and an ESP would be incomplete, biased, and meaningless. OCC contends that all ESPs that are now in effect use a CBP to obtain generation-related service for the electric utilities, so an ESP should be and is still required to provide projected rate impacts for generation, distribution, and transmission service. OCC asserts that there is no reason that the same information should not be required of an MRO proposal. Further, opines OCC, ESPs have many generation-related provisions with, as Duke observes, “highly contingent and uninformed projections” that rely on the competitive market prices in the RTOs. In sum, concludes OCC, contrary to Duke’s assertions, the dynamic nature of competitive market prices for generation service is not a good reason for eliminating the need for projecting rate impacts and potential consumer savings of an MRO proposal.

{¶ 18} The Commission disagrees with Duke’s proposal, as such information is useful to the Commission in its review of pending applications.

{¶ 19} **Ohio Adm.Code 4901:1-35-03(B)(2)(h), Filing and Contents of SSO Applications:** Duke contends that this rule requires a “discussion of alternative retail rate options that were considered in the development of the CBP plan,” but does not provide any specifics about what must be considered. In Duke’s opinion, the Commission should clarify a baseline standard for what constitutes a sufficient discussion of alternatives, both for the benefit of utility applicants and commenters who may believe that different alternatives should have been considered.

{¶ 20} No party filed a response to Duke’s proposed changes.

{¶ 21} The Commission is not persuaded by Duke’s arguments. The rule is clear that the application should include a discussion of alternative rate options that were considered in the development of the CBP plan. Duke argues that the rule should be changed because it does not state what must be considered. We are not persuaded that the rule should require the utility to consider specific alternatives, in exclusion of all others; instead, we believe that the rule is not currently causing any issues that need to be remedied.

{¶ 22} **Ohio Adm.Code 4901:1-35-03(B)(2)(k), Filing and Contents of SSO Applications:** Duke observes that this rule requires a utility to describe how its CBP relates to its plans to comply with requirements that will not exist in the near future, i.e., “alternative energy portfolio requirements of [R.C. 4928.64], and energy efficiency requirements and peak demand reduction requirements of [R.C. 4928.66].” In Duke’s opinion, the recently passed H.B. 6 provides for utilities to reduce their alternative energy portfolio requirements beginning in 2020 and to terminate energy efficiency portfolio plans at the end of 2020; thus, this requirement will soon be obsolete and its presence will be unnecessarily confusing.

{¶ 23} In reply comments, OCC states that Duke’s proposal should be rejected. OCC argues that electric utilities have not committed, or much less been required, to eliminate or withdraw from such requirements and their associated customer charges. Further, adds OCC, eliminating an individual utility’s obligation to comply with Ohio Adm. Code 4901:1-35-03(B)(2)(k) can be considered on a case-by-case basis when the utility proposes to eliminate or withdraw from such programs. In OCC’s opinion, the requirements in Ohio Adm. Code 4901:1-35-03(B)(2)(k) are still needed and should be maintained, as they are in the public interest and protect consumers.

{¶ 24} The Commission finds that the changes proposed by Duke are not appropriate at this time. As enacted, H.B. 6 of the 133rd General Assembly provides for utilities to reduce their alternative energy portfolio requirements beginning in 2020 and to end energy efficiency requirements at the end of 2020. Thus, current language in the rule is applicable until December 21, 2020. If a utility files an SSO application after December 31, 2020, the utility can include with its application a statement explaining that part of the rule is no longer applicable because of H.B. 6. Further, a utility could still voluntarily agree to participate in some fashion.

{¶ 25} **Ohio Adm.Code 4901:1-35-03(C)(9)(g)(ii), Filing and Contents of SSO Applications:** OCC states that the distribution infrastructure modernization (DIM) plans should include cost-benefit analyses to demonstrate that the plans are cost-effective and produce net benefits for consumers. OCC also urges that the DIM plans should quantify the benefits in distribution system reliability from the plans. Finally, OCC believes that the DIM plans should include details for how the overall cost-effectiveness and performance improvements will be evaluated as part of reviews that are conducted as the DIM plans are being implemented. OCC asserts that the reviews should be completed before costs are charged to consumers.

{¶ 26} In response, Duke contends that OCC’s proposal to add periodic reviews and assessments, and its proposal to return net operational savings to consumers, would be

superfluous and would unnecessarily constrain the Commission's discretion. In Duke's opinion, the Commission already has the power to impose such requirements and frequently does so when approving riders; making such requirements mandatory, however, would reduce the Commission's discretionary power. OCC's proposal to force utilities to provide a cost-benefit analysis and to quantify all reliability improvements would encourage utilities to take a reactive approach to grid modernization. Duke asserts that, in many cases, a cost/benefit analysis will fail to capture the long-term, big-picture benefits of a proactive approach.

{¶ 27} In response, FE asserts that OCC's proposed changes to 4901:1-35-03(B)(9)(g) are unnecessary and impractical, and would frustrate Ohio's policy of distribution grid modernization.

{¶ 28} In response, DP&L considers OCC's recommended edits to Ohio Adm. Code 4901:1-35-03(B)(9)(g), unnecessarily redundant and an end-run around to DP&L's filed and pending grid modernization plan. DP&L contends that OCC seeks amendments to require that certain information be included in grid modernization filings, such as cost-benefit analysis, quantification of reliability improvements, and verification of benefits to customers. DP&L notes that any time an EDU files an application including grid modernization plans, the EDU has the burden of proof to establish the lawfulness and reasonableness of the request. In DP&L's opinion, if OCC deems an application to be insufficient to meet an applicant's burden of proof, OCC can raise those issues in the pending case. Instead, asserts DP&L, OCC is attempting to codify its litigation positions that are more appropriately handled in the hearing room. DP&L argues that such issues should be addressed in the individual cases in which they are proposed.

{¶ 29} DP&L further notes that, while OCC also recommends that prudence reviews should be conducted before costs are charged to customers, OCC does not recommend any language to support its position. In DP&L's opinion, this type of traditional ratemaking is

something typically seen as part of a rate case filed that is pursuant to R.C. 4905.18 and defeats the entire concept of single-issue ratemaking authorized by R.C. 4928.143.

{¶ 30} The Commission grants in part and denies in part OCC's request. The Commission agrees to amend the rule so that SSO applications that contain an ESP proposal must include "a cost/benefit analysis," as well as details concerning how the ESP proposal addresses cost savings to the electric utility "and consumers." We believe that this information is relevant and will be helpful to the parties and the Commission in their respective reviews of ESP applications. Further, we agree to amend the rule to include the "quantitative and qualitative impacts of all reliability improvements." The Commission believes that this information is relevant and will be helpful to the parties and the Commission in their respective reviews of ESP applications.

{¶ 31} The Commission denies OCC's request for periodic prudence reviews and benefit assessments. The Commission has the authority and discretion to order periodic prudence reviews and benefits assessments, if and when it sees fit. We also deny OCC's request to verify that all projected benefits for consumers are actually achieved, as there is no compelling reason to limit the rationale for the inclusion of the aforementioned information. Finally, we deny OCC's request for a proposal to expedite the return of operation savings to consumers. We do not believe the utility should be required to make a proposal to return the operational savings to consumers; rather, parties may propose this in the proceeding and the Commission may order it, if it so chooses. Further, this information is already discernable through the requirements in Ohio Adm.Code 4901:1-35-03(C)(9)(g)(iii).

{¶ 32} **Ohio Adm.Code 4901:1-35-03(C)(3), Filing and Contents of SSO Applications:** OCC contends that EDUs should be required as part of their standard filing requirement to provide projections for any proposed placeholder riders through the life of the ESP. In OCC's opinion, the standard filing requirement should include an evaluation of the proposed ESP under the more favorable in the aggregate test.

{¶ 33} In reply, Duke states that OCC’s proposal for utilities to project the post-ESP rate impacts of placeholder riders, and to evaluate whether the proposed ESP would be more favorable in the aggregate than an MRO with the projected rate impact, makes no sense. Duke explains that, if a reasonable projection was possible, the rider would not have been sought as a placeholder in the first place. In Duke’s opinion, further relying on such speculative projections would undermine the integrity of the Commission analysis. Further, states Duke, the Ohio Supreme Court has repeatedly upheld the exclusion of post-ESP costs recovered under a placeholder rider from the statutorily required evaluation comparing an ESP to an MRO under R.C. 4928.143(C).

{¶ 34} In reply, DP&L states that OCC recommends requiring an SSO application to project rate impacts of placeholder riders initially set at zero-dollar rates. DP&L observes that the Supreme Court of Ohio has allowed the use of placeholder riders in ESPs. Moreover, asserts DP&L, if a placeholder rider has an initial zero-dollar rate, that is because the rate impacts are incapable of being calculated, as it will require a future filing that may or may not even be composed and will be subject to litigation, Commission review or modification, and judicial appeal.

{¶ 35} The Commission finds that OCC’s proposal to include the projected rate impact by customer class/rate schedule of post-ESP “placeholder riders” is unnecessary. We also disagree with OCC’s recommendation to accept the language relating to an evaluation of the proposed ESP under the more favorable in the aggregate test, as that test is already provided for in R.C. 4928.143(C).

{¶ 36} **Ohio Adm.Code 4901:1-35-03(C)(9), Filing and Contents of SSO Applications:** OCC proposes that, to provide more transparency and accounting regarding the filing of an ESP, there needs to be more information provided pertaining to associated legal and other expenses, in a manner similar to the requirement governing rate cases. OCC’s proposed language would require each electric utility to provide a detailed schedule with its original ESP filing that identifies line-item expenses to process and litigate the ESP

case. The filed schedule would include projected internal and external expenses; within ten days of the close of hearings on the ESP case, the electric utility would have to file, as a late filed exhibit, the most recent estimate of the current ESP case expense. The schedule would have to provide a narrative description as to what accounts the expenses are booked, and whether and in what form the expenses are to be collected from utility consumers. The schedule would be subject to audit during the course of the ESP case.

{¶ 37} In reply, Duke argues that OCC's proposal to require that utilities file a detailed schedule of all expenses incurred to process and litigate the ESP case, and that the schedule be subject to audit, is unnecessary because utilities have not been permitted to recover these costs in an ESP case. Duke contends that, if and when such costs become recoverable, Duke would agree to provide documentation for cost recovery.

{¶ 38} In reply, DP&L states that it supports OCC's proposal to the extent these costs are recoverable. To accomplish this, DP&L recommends adding language to OCC's proposal specifying that, "to receive recovery of case expenses associated with an ESP case," each electric utility must provide a detailed schedule with its original ESP filing that identifies line-item expenses to process and litigate the ESP case. DP&L adds that any such rule should not supersede, or limit in any way, the right of an EDU to withhold information that is privileged or protected attorney work product, and that any submission of expenses under such rule should not be deemed a waiver of those rights by the EDU.

{¶ 39} The Commission does not find that OCC's proposal should be adopted. We do not believe that OCC has provided a compelling rationale for this proposed rule change. These costs have not historically been recoverable, so requiring the company to calculate and file these expenses does not service a relevant purpose.

**{¶ 40} Ohio Adm.Code 4901:1-35-03(G), Filing and Contents of SSO Applications:** FE states that the current rules also require that electronic versions of schedules, tariffs, and worksheets included in an application be made available within two days upon request by the Commission or any intervenor. While electronic transmittals are now the norm,

contends FE, at times voluminous documents may be too large to transmit in one or a few emails, and may need to be transmitted by compact disc (CD) or other electronic media. Further, such materials may include confidential or competitively sensitive confidential information in need of a protective agreement. Therefore, FE proposes that Ohio Adm.Code 4901:1-35-03(G) be amended to state that such materials be available within two business days or as soon as practicable, subject to protective agreements as appropriate.

{¶ 41} In reply comments, OCC asserts that FE's proposal should be rejected. OCC asserts that FE's proposal is ambiguous and would unnecessarily delay providing essential information to the parties for developing a proper record. As indicated by FE, these types of documents and information are already available and possessed by the electric utilities in electronic format, and can be transmitted easily and readily through e-mails, CDs, or other electronic formats, within two business days. Further, contends OCC, there is no definition of what constitutes "as soon as practicable." If there is any confidential or protected information involved in an electric utility's SSO application, the utility can move for a protective order through the process for protection already in place. OCC concludes that protecting consumers' ability to effectively and efficiently participate in SSO proceedings means not adopting FE's proposal.

{¶ 42} The Commission is not persuaded that a change is needed at this time, as FE has not provided a compelling reason to make a change. The documents referred to by FE can be sent easily through electronic means. If there is confidential information in a filing, the utility can file a motion for a protective order and the parties can enter into non-disclosure agreements.

{¶ 43} **Ohio Adm.Code 4901:1-35-04(C) Service of Application:** FE proposes that the need to negotiate and execute an appropriate protective agreement may hinder the required five-day turnaround for service of an application. FE suggests that current language, which requires the electric utility to provide electronic copies of the application upon request and transmit the application within five business days, be amended to include

language stating that service is “as soon as practicable and subject to execution of such protective agreement(s) as appropriate.”

{¶ 44} In reply comments, OCC contends that FE’s proposed language is ambiguous and would delay providing essential information to the parties in developing a proper record. OCC adds that the documents could be submitted via email, compact disk, or other electronic formats within two business days. Finally, OCC adds, there is no definition for “as soon as practicable” as proposed by FE.<sup>1</sup>

{¶ 45} The Commission finds that there is no need to amend the rule as FE recommends. FE has not provided a compelling reason to make a change; such documents can be sent easily through electronic means. If there is confidential information in a filing, the utility can file a motion for a protective order and the parties can enter into non-disclosure agreements.

{¶ 46} **Ohio Adm.Code 4901:1-35-11(A) and (B) Competitive Bidding Process Ongoing Review and Reporting Requirements:** Duke notes that this rule describes the quarterly and annual filings that a utility must make when its CBP is approved subject to a price blending period, even though the price blending requirement is no longer imposed in any CBP approvals. Duke notes that all utilities procure generation for their standard SSO pursuant to a CBP, which sets a market price. Therefore, states Duke, there can be no price blending, and there is no need to regulate price blending, as these sections are obsolete and should be removed.

{¶ 47} In reply, OCC urges the Commission to reject Duke’s proposal. OCC asserts that, although price blending requirements may not be in place for currently approved CPBs, they may be necessary in the future. If that becomes true, OCC adds, consumers would be protected by requiring utilities to comply with Ohio Adm.Code 4901:1-35-11. In

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<sup>1</sup> The Commission notes that, in OCC’s Reply Comments, OCC refers to Ohio Adm.Code 4901:1-35-03(G) when responding to FE’s proposed language. The Commission assumes that OCC intended to refer to Ohio Adm.Code 4901:1-35-04(C), which concerns providing SSO applications electronically.

OCC's opinion, a bigger issue to consider in this rules review case involves Duke's admission regarding the CBP. Regarding Duke's contention that "[a]ll utilities procure generation for their \* \* \* SSO pursuant to a CPB, which sets a market price," OCC asserts that if all electric utilities are providing their SSO through an MRO, there should be no further need for ESPs. In OCC's opinion, the transition to a full MRO has been achieved; therefore, the continued reliance on ESPs for delivering the SSO is harming customers because of the resulting above-market charges and subsidy payments. OCC concludes that there should be serious consideration given to eliminating the ESP option from the Commission's rules.

{¶ 48} The Commission finds that the rule should not be amended at this time, as Duke has not provided a compelling reason to make a change.

**{¶ 49} Reply Comments filed by The Northwest Ohio Aggregation Coalition (NOAC):** The Commission has reviewed what NOAC filed as reply comments. We find that, as NOAC's remarks are more of the nature of comments than replies, we will not address NOAC's remarks further.

### *C. Conclusion*

{¶ 50} The Commission has considered the matters set forth in R.C. 121.82. With these factors in mind, and upon consideration of Staff's recommendations and the written comments, the Commission finds that Ohio Adm.Code 4901:1-35-01, 4901:1-35-03, 4901:1-35-08, 4901:1-35-09, and 4901:1-35-11 should be amended, as set forth in Attachment A. The Commission also finds that no change should be made to Ohio Adm.Code 4901:1-35-02, 4901:1-35-04, 4901:1-35-05, 4901:1-35-06, 4901:1-35-07, and 4901:1-35-10.

{¶ 51} The rules are 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 Finding and Order only. Interested persons are directed to input case number 18-1188 into the Case Lookup Box to view the rules, as well

as this Finding and Order, or to contact the Commission's Docketing Division to request a paper copy.

### III. ORDER

{¶ 52} It is, therefore,

{¶ 53} ORDERED, That amended Ohio Adm.Code 4901:1-35-01, 4901:1-35-03, 4901:1-35-08, 4901:1-35-09, and 4901:1-35-11 be adopted. It is, further,

{¶ 54} ORDERED, That Ohio Adm.Code 4901:1-35-02, 4901:1-35-04, 4901:1-35-05, 4901:1-35-06, 4901:1-35-07, and 4901:1-35-10 be adopted with no changes. It is, further,

{¶ 55} ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with R.C. 111.15. It is, further,

{¶ 56} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code 4901:1-35 shall be in compliance with R.C. 106.03. It is, further,

{¶ 57} ORDERED, That a copy of this Finding and Order be served upon the Commons Sense Initiative at [CSIPublicComments@governor.ohio.gov](mailto:CSIPublicComments@governor.ohio.gov)., It is, further,

{¶ 58} ORDERED, That a copy of this Finding and Order 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, the Electric-Energy industry list-serve, OCC, and NOAC.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

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 ~~alther 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.

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**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

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

proposal for a competitive bidding process (CBP), shall comply with the applicable 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

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CBP plan, considering alternative possible methods of procurement. Each CBP plan shall 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

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completion of the CBP.

- (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

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for the adoption of the proposed bidding process.

- (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

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Code.

- (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.

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- (b) Divisions (B)(2)(b) and (B)(2)(c) of section 4928.143 of the Revised Code, authorize an 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

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service. Such components would include, but are not limited to, terms and 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

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to include provisions relating to transmission and other specified related services. 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 a cost-benefit analysis, how the proposal addresses any cost savings to the electric utility and customers, 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.

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- (ii) A description of the benefits of the infrastructure modernization plan (in total and by activity or type), including but not limited to the following as they may apply to the plan: quantification of all reliability improvements~~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

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Revised Code is applicable only if an ESP has a term exceeding three years, and would 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

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plan is in compliance with section 4928.17 of the Revised Code, Chapter 4901:1-37 of the 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

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formulas intact, compatible with personal computers.

**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.

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## **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:

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- (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.

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- (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.

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**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

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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.

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- (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

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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.

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

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

Summary: Finding & Order adopting proposed amendments to Ohio Adm.Code 4901:1-35-01, 4901:1-35-03, 4901:1-35-08, 4901:1-35-09, and 4901:1-35-11 and as no change rules Ohio Adm.Code 4901:1-35-02, 4901:1-35-04, 4901:1-35-05, 4901:1-35-06, 4901:1-35-07, and 4901:1-35-10 electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio