

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE RULES IN OHIO
ADM.CODE CHAPTER 4901:1-2
REGARDING THE PROTECTION OF
UNDERGROUND UTILITY FACILITIES.

CASE NO. 21-896-AU-ORD

FINDING AND ORDER

Entered in the Journal on January 12, 2022

I. SUMMARY

{¶ 1} The Commission adopts, with no changes, the current rules contained in Ohio Adm.Code Chapter 4901:1-2, entitled Protection of Underground Utility Facilities.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission opened this docket to review the rules pertaining to the protection of underground utility facilities in Ohio Adm.Code Chapter 4901:1-2.

{¶ 3} R.C. 106.03(A) requires that the Commission 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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 citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;
- (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} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 5} Pursuant to R.C. 121.95(F), a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. In accordance with R.C. 121.95, and prior to January 1, 2020, the Commission identified rules having one or more regulatory restrictions that require or prohibit an action, prepared a base inventory of these restrictions in the existing rules, and submitted this base inventory to JCARR, as well as posted this inventory on the Commission's website at <https://puco.ohio.gov/wps/portal/gov/puco/documents-and-rules/resources/restrictions>. With regard to the no change rules discussed in this Finding and Order with respect to Ohio Adm.Code Chapter 4901:1-2, the Commission has both considered and satisfied the requirements in R.C. 121.95(F).

B. Procedural History

{¶ 6} On September 21, 2021, the Commission held a workshop in this proceeding to enable interested stakeholders to propose revisions to Ohio Adm.Code Chapter 4901:1-2. No stakeholders offered comments on this rule chapter at the workshop.

{¶ 7} The Commission and Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-2. As a result of that review, Staff recommended no changes to the rules in Ohio Adm.Code Chapter 4901:1-2.

{¶ 8} By Entry issued on November 3, 2021, the Commission requested comments and reply comments on Staff's recommendation to adopt the rules in Ohio Adm.Code Chapter 4901:1-2 as no change rules and ordered that comments and reply comments should be filed by November 24, 2021, and December 3, 2021, respectively.

{¶ 9} No comments were filed in response to Staff's proposal to make no changes to Ohio Adm.Code Chapter 4901:1-2.

III. CONCLUSION

{¶ 10} In making its rules, an agency is required by R.C. 106.03(A) to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any relevant factors that have changed in the subject matter area affected by the rules. The Commission has evaluated Ohio Adm.Code Chapter 4901:1-2 and finds that the current rules in this chapter should be adopted with no changes.

{¶ 11} An agency must also demonstrate that it has evaluated the impact of the rule on businesses, pursuant to R.C. 106.03(A)(6) and 121.82(A). Moreover, pursuant to R.C. 121.95(F), the agency must remove two or more existing regulatory restrictions for every new regulatory restriction added. The Commission has included stakeholders in the development of these rules, has considered the impact of the rules on businesses, and has adhered to the requirement regarding the removal of regulatory restrictions.

{¶ 12} Accordingly, at this time, the Commission finds no changes should be made to Ohio Adm.Code Chapter 4901:1-2.

{¶ 13} 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. All interested persons are directed to input case number 21-896 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

IV. ORDER

{¶ 14} It is, therefore,

{¶ 15} ORDERED, That Ohio Adm.Code Chapter 4901:1-2 be adopted with no changes. It is, further,

{¶ 16} 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 divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 17} ORDERED, That a copy of this Entry be sent to the Electric-Energy, Gas-Pipeline, Telephone, and Water industry service lists. It is, further,

{¶ 18} ORDERED, That a copy of this Entry be served upon all regulated electric distribution companies, regulated gas and natural gas companies, all incumbent local exchange companies, the Ohio Gas Association, the Ohio Oil and Gas Association, the Ohio Petroleum Council, the Ohio Telecom Association, the Ohio Cable Telecommunications Association, the Ohio Utilities Protection Service, and all other interested persons of record.

COMMISSIONERS:

Approving:

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

JRJ/mef

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Case No(s). 21-0896-AU-ORD

Summary: Finding & Order adopting, with no changes, the current rules contained in Ohio Adm.Code Chapter 4901:1-2, entitled Protection of Underground Utility Facilities electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio