

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF THE RULES IN OHIO ADM.
CODE CHAPTER 4901:1-41.

CASE NO. 22-864-EL-ORD

ENTRY

Entered in the Journal on October 5, 2022

I. SUMMARY

{¶ 1} The Commission directs that all interested persons or entities wishing to file comments with the Commission regarding the rules in Ohio Adm.Code Chapter 4901:1-41 do so not later than October 19, 2022.

II. DISCUSSION

{¶ 2} R.C. 121.951(A)(1) requires state agencies to reduce their total number of regulatory restrictions, and this docket was opened to review the greenhouse gas reporting rules in accordance with the requirements of this statute. Additionally, R.C. 106.03(A) requires the Commission to determine whether the rules should be continued without amendment, be amended, or rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted. As part of this analysis, the Commission must ascertain if the rule is still pertinent and not duplicative of existing state and federal law. Additionally, the Commission must assess if the rule is still reasonably effective for enforcement purposes. As part of this review, the Commission must consider whether the rule has an adverse impact on businesses, as determined under R.C. 107.52, or on any other person or entity.

{¶ 3} 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 when deemed necessary, 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 to the Common Sense Initiative office for comment.

{¶ 4} Staff has evaluated the rules under review in this proceeding as in order to reduce the number of regulatory restrictions. As a result of its review, Staff proposes substantive changes to reduce the total number of regulatory restrictions, pursuant to R.C. 121.951(A)(1). Additionally, Staff proposes minor, non-substantive changes throughout these chapters that are intended to improve clarity, better align language with that used in the related statutory provisions, or to correct typographical errors. Based on the requirement under Ohio Revised Code 121.951(A)(1), the Commission also proposes several substantive changes to the rules to meet the requirement for state agencies to reduce their total number of regulatory restrictions.

{¶ 5} Attached to this Entry are the proposed revisions to Ohio Adm.Code Chapter 4901:1-41 and the related BIA, 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 22-864 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.

{¶ 6} The Commission requests comments from interested persons to assist in the rule review. Comments should be filed, via electronic filing or in hard copy, by October 19, 2022. If any stakeholders identify additional regulatory restrictions that can be removed from the rules subject to review, they are invited to do so. If any stakeholders recommend keeping a restriction that is proposed to be removed, the stakeholder should recommend two other restrictions that should be removed in its place.

III. ORDER

{¶ 7} It is, therefore,

{¶ 8} ORDERED, That all interested persons or entities wishing to file comments with the Commission regarding the proposed rules do so no later than October 19, 2022. It is, further,

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

{¶ 10} 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:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JML/IMM/dmh

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

AMENDED

4901:1-41-01 Definitions.

- ~~(A) "Carbon dioxide control plan" means a process to measure carbon dioxide emissions and evaluate and implement carbon dioxide control options for an electric generating facility that emits greenhouse gases.~~
- ~~(B)~~ (A) "Commission" means the public utilities commission of Ohio.
- ~~(C)~~ (B) "The Climate Registry" means the nonprofit collaboration among North American states, provinces, territories and native sovereign nations, using the website at www.theclimateregistry.org, that sets consistent and transparent standards to calculate, verify, and publicly report greenhouse gas emissions into a single registry.
- ~~(D)~~ (C) "Electric generating facility" means an electric generating plant and associated facilities capable of producing electricity of fifty megawatts or larger.
- ~~(E)~~ (D) "Greenhouse gas" means the emissions of carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and/or sulphur hexafluoride.
- ~~(F)~~ (E) "Public utility" means those entities included within the definition of "public utility" set forth in section 4905.02 of the Revised Code.

AMENDED

4901:1-41-02 Purpose and scope.

- (A) This chapter provides rules for the reporting of greenhouse gas emissions, ~~including participation in the climate registry, and carbon dioxide control plan requirements~~ for each electric generating facility that is located in this state, is owned and operated by a public utility that is subject to the commission's jurisdiction, and emits greenhouse gases, pursuant to section 4928.68 of the Revised Code.
- (B) The commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.

AMENDED

4901:1-41-03 Greenhouse gas reporting ~~and carbon dioxide control planning.~~

- (A) Unless otherwise directed by the commission, any public utility owning or operating an electric generating facility within Ohio that emits greenhouse gases shall become a participating reporting member in the

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climate registry and shall report greenhouse gas emissions according to the protocols approved by the climate registry.

- ~~(B) Any public utility that owns or operates an electric generating facility within Ohio that emits greenhouse gases shall file with the commission by April fifteenth of each calendar year a carbon dioxide control plan. If the public utility is required to submit a long term forecast report pursuant to rule 4901:5-3-01 of the Administrative Code, the carbon dioxide plan shall be included with the public utility's long term forecast, or as otherwise directed by the commission. A copy of such plan shall also be provided to the director of the Ohio environmental protection agency, or his designee.~~
- ~~(C) The carbon dioxide control plan shall include all relevant technical information on the current conditions, goals, and potential actions for resource planning for each electric generating facility within Ohio that emits greenhouse gases. Any technology included in this plan, including clean coal, shall be based upon the most current scientific and engineering design capability of any facility or that has been designed to have the capability to control the emissions of carbon dioxide within the parameters of economically feasible best technology.~~



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio

Rule Contact Name and Contact Information:

Angela Hawkins, Legal Director Ph: 614-466-0122; angela.hawkins@puco.ohio.gov

Regulation/Package Title (a general description of the rules' substantive content):

Ohio Adm.Code 4901:1-41 Greenhouse Gas Reporting

Rule Number(s): Ohio Adm.Code 4901:1-41-01; 02; 03

Date of Submission for CSI Review: Oct 5, 2022

Public Comment Period End Date: Oct 19, 2022

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 3 rules (FYR? ___)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies

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should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- ☐ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- ☐ **Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code Chapter 4901:1-41 outlines the requirements for reporting greenhouse gas emissions (GHG) planning for electric generating facilities within Ohio by requiring public utilities owning or operating electric generation facilities to register with the Climate Registry, a continent-wide nonprofit that compiles a comprehensive list of GHG emissions, as required by R.C. 4928.68.

Any and all amendments to these proposed rules are made pursuant to Ohio Revised Code (R.C.) 121.951(A)(1) that requires state agencies to reduce their total number of regulatory restrictions, including redundancies and typographical errors when applicable. We have balanced the requirements set forth in R.C. 4928.68 with the need to reduce regulatory restrictions in R.C. 121.95, by eliminating several reporting requirements to the Commission,

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given the Ohio Environmental Protection Agency's existing reporting requirements for various emissions, as well as federal requirements.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

The authorizing statutes are R.C. 4905.04, 4928.68.

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

If yes, please briefly explain the source and substance of the federal requirement.

No, not applicable. The chapter does not implement a federal requirement but fulfills a state legislative mandate under R.C. 4928.68 to establish GHG emission reporting requirements for each electric generating facility that (a) is located in Ohio, (b) is owned or operated by a public utility that is subject to the Commission's jurisdiction, and (c) emits GHG. Regulated entities will fulfill this requirement by registering with the Climate Registry, a nonprofit that compiles a continent-wide registry for GHG emissions.

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

Not applicable

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

These rules fulfill a legislative mandate under R.C. 4928.68.

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

The Commission will measure the success of this regulation by monitoring whether each public utility with applicable generating facilities registers with the Climate Registry.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No, not applicable.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

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If applicable, please include the date and medium by which the stakeholders were initially contacted.

On October 5, 2022, in Case No. 22-863-EL-ORD, the Commission issued an Entry to all investor-owned electric utilities and certified competitive retail electric service providers in Ohio, and served upon the Electric-Energy industry list-serve to solicit comments for proposed amended rules under this Chapter.

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

The Commission will consider any and all comments made by stakeholders during the established comment period.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Not applicable.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The Commission was directed pursuant to R.C. 4928.68 to adopt rules establishing greenhouse gas emission reporting and has considered the suggestions proposed by Staff.

13. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

Not applicable.

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

The Commission has ensured that these rules do not duplicate the Ohio Environmental Protection Agency's (EPA) requirements by requiring that regulated entities report their GHG emissions to the Climate Registry, a nonprofit collaboration among North American states, provinces, territories, and native sovereign nations that sets consistent and transparent standards to calculate, verify, and publicly report GHG emissions. However, the Commission has proposed rules to alleviate duplicative reporting efforts on both a state and federal level.

15. 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.

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Interested stakeholders will have the opportunity to provide written comment to the proposed rules, including the existing regulation that this information be submitted to the Climate Registry, during the comment period before the final rules are promulgated pursuant to the review under R.C. 121.951(A)(1).

Adverse Impact to Business

16. 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; and

These rules apply to public utilities owning or operating electric generating facilities located within Ohio that are capable of producing electricity of 50 megawatts or larger.

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

The only adverse impact presently consists of the time in complying with the reporting requirements to the Climate Registry.

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.

Entities must conform to the Climate Registry’s reporting practices, which may take minimal effort to report the necessary information to be in compliance.

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

As noted above, the reporting requirements are statutory, and the costs of compliance are minimal.

Regulatory Flexibility

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

No, these rules do not apply to small businesses.

19. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

R.C. 119.14 applies to paperwork violations by small businesses and is not applicable.

20. What resources are available to assist small businesses with compliance of the regulation? Not applicable.

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Case No(s). 22-0864-EL-ORD

Summary: Entry directing that all interested persons or entities wishing to file comments with the Commission regarding the rules in Ohio Adm.Code Chapter 4901:1-41 do so not later than October 19, 2022 electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio