

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
REVIEW OF THE RULES IN OHIO ADM.  
CODE CHAPTER 4901:1-36.

CASE NO. 22-865-EL-ORD

## ENTRY

Entered in the Journal on October 19, 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 4901:1-36 do so not later than November 2, 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 transmission cost recovery rider 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106.03(A) requires the Commission to determine whether the rules should be continued without amendment, be amended, or rescinded, taking into consideration the purpose, scope, and intent of the statute(s) under which the rules were adopted.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.

{¶ 5} Attached to this Entry are the proposed revisions to Ohio Adm.Code Chapter 4901:1-36 and 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 22-865 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 November 2, 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 November 2, 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/hac

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

**AMENDED**

**4901:1-36-01 Definitions.**

- (A) "Application" means an application for a transmission cost recovery rider pursuant to this chapter.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) "Electric utility" ~~shall have~~has the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (D) "Staff" means the staff of the commission or its authorized representative.

**NO CHANGE**

**4901:1-36-02 Purpose and scope.**

- (A) This chapter authorizes an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility, net of financial transmission rights and other transmission-related revenues credited to the electric utility, by the federal energy regulatory commission or a regional transmission organization, independent system operator, or similar organization approved by the federal energy regulatory commission.
- (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**

**4901:1-36-03 Application.**

- (A) Each electric utility which seeks recovery of transmission and transmission-related costs shall file and accordingly, annually update an application with the commission for a transmission cost recovery rider in compliance with the appendix to this rule. ~~The initial application shall include all information set forth in the appendix to this rule.~~
- ~~(B) Each electric utility with an approved transmission cost recovery rider shall update the rider on an annual basis pursuant to a schedule set forth by commission order. Each application to update the transmission cost recovery rider shall include all information set forth in the appendix to this rule.~~

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

- (C) The commission may order that consultants be hired, with the costs billed to the electric utility and recoverable through the rider, to conduct prudence and/or financial reviews of the costs incurred and recovered through the transmission cost recovery rider.
- (D) Each annual application to update the transmission cost recovery rider should be made not less than seventy-five days prior to the proposed effective date of the updated rider.
- (E) If at anytime during the period between annual update filings, the electric utility or staff determines that costs are or will be substantially different than the amounts authorized as the result of the electric utility's previous application, the electric utility should file, on its own initiative or by order of the commission, an interim application to adjust the transmission cost recovery rider in order to avoid excessive carrying costs and to minimize rate impacts for the following update filing.
- (F) Affected parties may file a motion to intervene and detailed comments on any issues concerning any application filed under this rule within forty days of the date of the filing of the application.

**AMENDED**

**4901:1-36-04 Limitations.**

- (A) The transmission cost recovery rider costs are reconcilable on an annual basis, with carrying charges to be applied to both over- and under-recovery of costs.
- (B) ~~The transmission cost recovery rider shall be avoidable by all customers who choose alternative generation suppliers and the electric utility no longer bears the responsibility of providing generation and transmission service to the customers.~~
- (C) The transmission cost recovery rider shall include transmission and transmission-related costs and off-setting revenues, including ancillary and congestion-related costs and revenues, charged or credited to the utility by the ~~federal energy regulatory commission or a regional transmission organization, independent system operator, or similar organization approved by the federal energy regulatory commission~~ entity with control of transmission facilities under section 4928.12 of the Revised Code to the extent such costs and revenues are not included in any other schedule or rider in the electric utility's tariff on file with the commission.

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

## **AMENDED**

### **4901:1-36-05 Hearings.**

Unless otherwise ordered by the commission, the legal director, the deputy legal director, or the attorney examiner, the commission ~~shall~~ approves the application or sets the matter for hearing within seventy-five days after the filing of a complete application under this chapter. Proposed rates will become effective on the seventh-fifth day subject to reconciliation adjustments following any hearing, if necessary, or in its subsequent filing.

## **NO CHANGE**

### **4901:1-36-06 Additional information.**

- (A) On a biennial basis, the electric utility shall provide additional information detailing the electric utility's policies and procedures for minimizing any costs in the transmission cost recovery rider where the electric utility has control over such costs.
- (B) On a quarterly basis, each electric utility that seeks recovery of transmission and transmission-related costs shall submit to staff a report listing the cost components and amounts, customer revenue, and the monthly over and under-recovery in a format similar to that used in the application schedules for the reconciliation adjustment.



## 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](mailto:angela.hawkins@puco.ohio.gov)

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

Ohio Adm.Code Chapter 4901:1-36 Electric Transmission Cost Recovery Riders

**Rule Number(s):** 4901:1-36-01, 4901:1-36-02, 4901:1-36-03, 4901:1-36-04, 4901:1-36-05, 4901:1-36-06

**Date of Submission for CSI Review:** October 19, 2022

**Public Comment Period End Date:** November 2, 2022

**Rule Type/Number of Rules:**

New/\_\_\_ rules

No Change/\_\_\_2\_\_\_ rules (FYR? \_\_\_)

Amended/\_\_\_4\_\_\_ 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):**

- a. ☒ **Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. ☐ **Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. ☒ **Requires specific expenditures or the report of information as a condition of compliance.**
- d. ☐ **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 4901:1-36 establishes the means by which an electric utility may file an application for recovery of transmission and transmission-related costs through a transmission cost recovery rider (TCRR). If the rider is approved, each utility is required to update the rider annually. If, between annual updates, the utility determines that costs are or will differ substantially from what has been authorized from a prior application, the utility may file an interim application to adjust the rider.

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.



- 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 statute is R.C. 4928.06

- 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.*

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

- 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)?**

R.C. 4928.143(B)(2)(g) includes certain provisions relating to transmission, ancillary, congestion, or any related service required for the standard service offer, including provisions for the recovery of any cost of such service that an electric distribution utility incurs to be included in an application for approval of electric security plan. The purpose of this chapter, as stated in Ohio Adm.Code 4901:1-36-02, is to provide a framework for an electric utility to recover, through a reconcilable rider on the electric utility's distribution rates, all transmission and transmission-related costs, imposed on or charged to the utility by the Federal Energy Regulatory Commission (FERC) or a regional transmission organization, independent system operator, or similar organization approved by FERC.

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

This chapter fulfills a statutory requirement through the establishment of rules for Commission approval of an electric utility's electric transmission cost recovery rider, pursuant to R.C. 4928.143. The success of this chapter should be evaluated by the efficacy with which electric utilities are able to file, and obtain Commission approval of, appropriate rider applications.

- 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.

## **Development of the Regulation**

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

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

On October 19, 2022, in Case No. 22-865-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?**

This chapter prescribes the requirements for an electric utility's application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. No alternatives have been proposed by any Ohio electric utility subject to these regulations.

- 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.***

This chapter prescribes the requirements for an electric utility's application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. No performance-based alternatives were proposed by any Ohio electric utility subject to these regulations.

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

There are no other Ohio agencies responsible for the supervision and regulation of public utilities, under R.C. Chapter 4928 concerning competitive retail electric service.

- 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.**

Interested stakeholders will have the opportunity to provide written comment to the proposed rules 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 only apply to an Ohio electric utility filing an application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143.

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

The Commission does not charge any fees for the filing of applications to approve electric transmission recovery cost riders, pursuant to R.C. 4928.143, although electric utilities presumably incur administrative costs in the filing of these applications.

**c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

Any adverse impacts of these only apply to an Ohio electric utility filing an application for approval of an electric transmission recovery cost rider, pursuant to R.C. 4928.143. An electric utility would presumably incur administrative costs in filing of an application to approve its transmission recovery cost rider.

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

The Commission has not identified an adverse impact on business as a result of the proposed revisions. In fact, the business impacts resulting from the proposed revisions are expected to be positive impacts for the business community because the purpose of the rule change is to remove regulatory restrictions.

### **Regulatory Flexibility**

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

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?**

These rules do not apply to small businesses.

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

These rules do not apply to small businesses.

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**in**

**Case No(s). 22-0865-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 4901:1-36 do so not later than November 2, 2022 electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio